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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,837	06/18/2001	Stephen B. Maguire	40526.04501	9967

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EXAMINER

RINEHART, KENNETH

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 03/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/883,837

Applicant(s)

MAGUIRE, STEPHEN B.

Examiner

Kenneth B Rinehart

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 June 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) 1-4, 6, 10, 19-22 and 25 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18, 23, 24 and 26-42 is/are allowed.
- 6) ☒ Claim(s) 5, 7-9 and 11-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12/18/01 / 12/18/01 / 2/26/02 / 4/24/02 / 3/22/03
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION*****Response to Arguments***

Applicant's arguments filed 2/5/2004 have been fully considered but they are not persuasive. The applicant argues that drying, heating and or curing the granular material prior to molding or extrusion are not processes which are material different from each other. The examiner disagrees. The granular material can be softened by partially melting the granular material and this process would be materially different from drying. Regarding the assertion that the examiner failed to provide a showing that the process as claimed can be practiced by a materially different or by hand. A reading of the passage will indicate that the conjunction "or" is utilized and no such showing is required. Consequently, the applicant's arguments are irrelevant. Regarding, the applicants arguments concerning applicants assertion that the restriction is unsupportable and should be withdrawn and the characterization of the tow groupings as subcombination and combination. The examiner disagrees. Any fair readings of the claims will reveal that the limitations of the subcombination of one grouping are not contained in the grouping of claims of the combination. Regarding the applicant's statements concerning groups 1 and 3, the applicant argues that **no showing** was made of whether the combination as claimed does, or does not, require the particulars of the subcombination for patentability. The examiner disagrees. The examiner has fulfilled his requirements under section 806.05c. The examiner can find no reference to operability in this passage of the restriction. Consequently, the applicant's arguments are not pertinent. Regarding applicants arguments concerning Group 1 and 4 are not persuasive. The applicant argues that the invention of groups 1 and 4 are disclosed as capable of use together. However, the applicant has failed to provide any excerpts or citations from the

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disclosure to support his arguments. Applicant's arguments are nothing more than conclusory statements which are not persuasive. Regarding the argument that it is illogical to contend that the inventions of claims of groups 1 and 4 are unrelated apparently because the claims of group 4 have modes of operation, functions and effects which are congruent with one of the component elements of the claims of group 1. The applicant apparently believes that through some type of component analysis that he has performed, there is some "congruent" relationship between the group 4 modes of operation, function, and effects, and group 1. The examiner can find no basis in the MPEP for such a component analysis with congruent relationships. The applicant alleges that the proper characterization of the claims of groups 1 and 4 is that the claims of group 4 are directed to a method which must be practiced by one of the elements of the claims of group 1 in order for those group 1 claims to be operable. Therefore, the groups cannot be unrelated.

Consequently, the applicant has performed an analysis obtained from somewhere, developed an allegation or conclusion and found the groups related. The examiner does not find these arguments plausible or relevant. Regarding the applicant's argument concerning groups 1 through 3 and 4. The examiner can find no such grouping, and therefore cannot respond. The applicant argues that the invention of groups 1 and groups 5 and 6 are disclosed as capable of use together. However, the applicant has failed to provide any excerpts or citations from the disclosure to support his arguments. Applicant's arguments are nothing more than conclusory statements which are not persuasive. Applicant's arguments concerning the restriction of grouping 3 and 4 is merely a conclusory statement and not a complete response pointing out the specific errors in the restriction. Consequently, the applicant's arguments are not persuasive. On pages 11-13, it is somewhat unclear as to what the applicant is trying to argue. It appears as if he

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is inferring that the inventions are related and therefore though the search is burdensome this in and of itself cannot justify restriction of related inventions. The previous response given above to the applicants' allegations on pages 3-10 illustrate that the inventions are in fact unrelated and therefore the applicant's allegations are moot. The applicant next asserts that the examiner will not be unduly burdened by searching and examining all of the claims presented by the applicant and then copies passages of the MPEP onto pages 12 and 13 of his remarks to lengthen his response. The applicant is once again making a conclusory statement and not supporting this statement with facts. For example, a signed affidavit from a former examiner in the relevant art attesting to the fact that a search of the claims would not be burdensome would be more persuasive than merely paragraphs lifted from the MPEP discussing the examining process.

The applicant next argues that the costs associated with the prosecution of a restricted applicant would impose a heavy burden. Since this is a private matter, it is the applicant's decision as how best to proceed. It appears from the pages of the response dealing with this cost argument that the bulk of the costs in the prosecution are generated through attorney fees. Regarding these expenditures the applicant has other alternatives. These include prosecuting the application pro se, abandoning the application, or finding an attorney who charges lower fees. Once again, it is the applicant's decision as how best to proceed.

***Information Disclosure Statement***

The information disclosure statement filed 12/6/2001 and 6/18/01 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered. The examiner cannot find a copy of references CW, CX, DB, and 5594036.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 5, 7 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by 4300060. 4300060 shows a tubular housing having inlet and outlet ends with material heating and drying zones positioned therebetween (2, 9, fig. 1); means for supplying granular or powdery material to be dried to said heating zone via said inlet end (3, fig. 1), means for heating material in said heating zone of said housing' (5, fig. 1), means for selectably sealing material in said drying zone from said heating zone and permitting material travel from said heating zone to said drying zone (30, fig. 1, fig. 2), means for drawing vacuum over material in said drying zone (10, fig. 1), means for evacuating dried material from said drying zone for molding or extrusion (19, fig. 1, the apparatus is presently capable of performing this function), a first material processing chamber (7, fig. 1); a second material processing chamber (9, fig. 1); manifold means, connected

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to said first and second processing chambers for selectably furnishing material to be dried to one of said first and second processing chambers (17, fig. 1); means for heating material within said first and second processing chambers (5, fig. 1); means for drawing vacuum over material in a selected one of said first and second processing chambers having had material heated therein (11, fig. 1); and means for evacuating material from a selected one of said chambers having dried material therein (19, fig. 1) said manifold means furnishes material to a selected one of said first and second chambers most recently having had dried material evacuated therefrom (17, fig. 1).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over 4300060. 4300060 discloses a first material processing chamber (7, fig. 1); a second material processing chamber (9, fig. 1); manifold means, connected to said first and second processing chambers for selectably furnishing material to be dried to one of said first and second processing chambers (17, fig. 1); means for heating material within said first and second processing chambers (5, fig. 1); means for drawing vacuum over material in a selected one of said first and second processing chambers having had material heated therein (11, fig. 1); and means for evacuating material from a selected one of said chambers having dried material therein (19, fig. 1). 4300060 discloses applicant's invention substantially as claimed with the exception of separate means for heating

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material in said first and second processing chambers. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have separate heating means because Applicant has not disclosed that the number of heating means provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either the heating means of 4300060 or the claimed heating means because both quantities of heating means perform the same function of heating equally well.

Claim 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over 43000600 in view of Wood et al. 4300060 discloses a plurality of canisters rotatable about a common vertical axis serially among material heating, vacuum drying and inventory positions (fig. 2); means for rotating said canisters about said axis among said heating, vacuum drying and inventory positions (26, fig. 2), means for heating contents of a canister at said heating position (5, fig. 1), means for drawing vacuum within a canister at said vacuum drying position (11, fig. 1). 4300060 discloses applicant's invention substantially as claimed with the exception of said canisters including axially moveable valve means for selectably permitting downward flow of dried granular or powdery material out of a canister at said inventory position, said valve reciprocates, said valve moves along the axis of said canister, said valve moves in a range of motion having one extreme within said canister and remaining extreme outside said canister, said valve moves responsively to motion of an axial rod within said canister, a pneumatic piston cylinder means for actuating said valve. Wood et al teaches said canisters including axially moveable valve means for selectably permitting downward flow of dried granular or powdery material out of a canister at said inventory position (23, fig. 1), said valve reciprocates (fig. 1, fig. 2), said valve



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moves along the axis of said canister, said valve moves in a range of motion having one extreme within said canister and remaining extreme outside said canister (fig. 1, fig. 2), said valve moves responsively to motion of an axial rod within said canister (24, fig. 1), a pneumatic piston cylinder means for actuating said valve (30, fig. 1) for the purpose of forming a tight seal. It would have been obvious to one of ordinary skill in the art to modify 4300060 by including said canisters including axially moveable valve means for selectably permitting downward flow of dried granular or powdery material out of a canister at said inventory position, said valve moves along the axis of said canister, said valve moves in a range of motion having one extreme within said canister and remaining extreme outside said canister, said valve moves responsively to motion of an axial rod within said canister, a pneumatic piston cylinder means for actuating said valve said valve reciprocates as taught by Wood et al for the purpose of forming a tight seal so that material is not inadvertently released.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over 4300060 in view of Raker. 4300060 discloses a frame (fig. 1), a plurality of canisters carried by said frame ... and moveable among at least material heating and vacuum drying positions (fig. 1), canisters (fig. 1). 4300060 discloses applicant's invention substantially as claimed with the exception of a cabinet supported by said frame and including an access door... within said cabinet, means for sensing when said door is open and responsively thereto disabling said canisters form movement. Raker teaches a cabinet supported by said frame and including an access door... within said cabinet, means for sensing when said door is open and responsively thereto disabling said ... form movement (12, 14, 16, fig. 1) for the purpose of ensuring operator safety. It would have been obvious to one of ordinary skill in the art to modify 4300060 by including a cabinet

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supported by said frame and including an access door... within said cabinet, means for sensing when said door is open and responsively thereto disabling said ... form movement as taught by 4300060 for the purpose of ensuring operator safety to prevent injury and improve productivity.

***Allowable Subject Matter***

Claims 18, 23, 24, 26-42 are allowed.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth B Rinehart whose telephone number is 703-308-1722. The examiner can normally be reached on 7:30-4:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on 703-308-1935. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

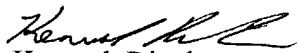
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A handwritten signature in black ink, appearing to read "Kenneth Rinehart", written in a cursive style.

Kenneth Rinehart

Patent Examiner

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